

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.230/SRT/2022

निर्धारण वर्ष/Assessment Year: (2019-20)

(Physical Court Hearing)

Assistant Commissioner of Income-tax, Central Circle-2, Room No.505, 5 <sup>th</sup> Floor, Aayakar Bhawan, Majura Gate, Surat-395001	Vs.	M/s Hi-Tech Sweet Water Technologies (P.) Ltd., 4, Gopal Nagar, Nandeda Char Rasta, GIDC, Bardoli-394601
(Appellant)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACH7432C		

निर्धारित की ओर से Assessee by	Shri Kiran K. Shah, CA
राजस्व की ओर से /Respondent by	Shri Vinod Kumar, Sr.DR
सुनवाई की तारीख/Date of Hearing	23/12/2022
घोषणा की तारीख/Date of Pronouncement	30/01/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2019-20, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the Id.CIT(A)”], in Appeal No. CIT(A), Surat-4/10003/2020-21, dated 09.05.2022, which in turn arises out of an assessment order passed by the Assessing Officer, under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. The grounds of appeal filed by the Revenue are as follows:

*“[i] On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in observing that, the provisions about furnishing auditor's report in Form 10CCB along with return of income is a procedural provision and directory in nature and it would suffice if such report is made available to the assessing officer before the framing of the assessment and the (assessing officer) has to consider, apply his mind and decide on the issue, by relying upon the decision of the Hon'ble Jurisdictional High Court in the case of Gujarat in the case of Gujarat Oil and Allied Industries (201 ITR 325) and accordingly, directing the assessing officer to allow the claim of deduction under Sec.80IA of*

*the Act to the assessee after verification of Form 10CCB filed by the assessee, without appreciating the fact that the facts of the case relied upon by him and the facts involved in the case are entirely different and also without appreciating the express provisions of Section 80IA(7) r.w.s. 44AB of the Act.*

*[ii] On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in simply directing the assessing officer to allow the claim of deduction under Sec.80IA of the Act to the assessee after verification of Form 10CCB filed by the assessee and by not invoking the provisions of Sec.250(4) of the Act or providing an opportunity to the assessing officer to verify the same and submit a report during the course of appellate proceedings itself, without appreciating the fact that the assessee has filed an appeal against the order under Sec, 143( 1) of the Act issued by the CPC and no scrutiny assessment has been completed in this case.*

*[iii] On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee is a consistent defaulter in complying the provisions of Section 80IA(7) r.w.s. 44AB of the I.T. Act as the assessee has defaulted in submitting the audit report within the prescribed time limit four times out of the last five assessment years i.e. A.Y.2015-16, 2016-17, 2017-18 and 2019-20.*

*[iv] It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the assessing officer may be restored to the above extent.*

*[v] The assessee craves leave to add, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*

3. Brief facts of the issue in dispute are stated as under: The assessee-company filed the return of income declaring total income of Rs.3,86,33,790/-. The assessee is engaged in the business of manufacturing and marketing of RO plants. The assessee has three eligible undertakings u/s 80IA of the Act which are providing water treatment facilities to various state Government organizations. The assessee claimed deduction u/s 80IA of that Act of Rs.1,67,47,499/-. The said deduction was allowed to the assessee in the earlier assessment years in the orders passed u/s 143(3) of the Act. In the impugned assessment year, the assessee had not filed the prescribed form No.10CCB, as prescribed in the I.T. Rules, alongwith the Return of Income. As a consequence of the same, assessing officer disallowed the said deduction.

4. Aggrieved by the said disallowance, the assessee carried the matter in appeal before the Id CIT(A), who has allowed the deduction claimed by the

assessee under section 80IA of the Act. The Id CIT(A) held that the provision about furnishing of auditor's report in form No. 10CCB along with the return is the procedural provision and directory in nature and it would suffice if such reports made available to the assessing officer before the framing of the assessment, and the same the assessing officer has to consider, apply his mind and decide on the issue.

5. Later on, the assessee had moved a rectification application under section 154, dated 05.09.2022 stating that the direction to the assessing officer in the said appellate order does not specify that the verification of Form 10CCB has to be done from the system with reference to the date of filing of the said Form. That is, whether the Form 10CCB for the relevant assessment year was filed by the assessee on system before the date of processing of return u/s 143(1) of the Act. It was submitted by the assessee in the said rectification application that the assessing officer was unable to follow the direction while giving effect to the appellate order. Based on these facts, the Id CIT(A) has rectified his order stating as follows:

*“3. Accordingly, it is clarified that the assessing officer has to verify whether the appellant has filed Form 10CCB on system before the date of processing of return u/s 143(1) of the Act. In case, the appellant has filed the said Form before the date of processing of return, the deduction so claimed u/s 80IA of the Act has to be allowed to the appellant.*

*4. With the above clarification, the rectification application filed by the AR of the appellant stands disposed”*

6. Aggrieved by the rectified order of Id CIT(A), the Revenue is in appeal before us.

7. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. The Learned Departmental Representative (Ld. DR) for the Revenue, submitted that since the assessee has not filed Form No. 10CCB along with return of income, therefore deduction

claimed by the assessee under section 80IA of the Act should be disallowed. The issue before us is relating to disallowance of deduction u/s 80IA of the Act as the assessee did not file form 10CCB alongwith the Return of Income. According to the assessing officer, the deduction u/s 80IA was disallowed as the assessee failed to file the form 10CCB alongwith the return as provided u/s 139 of the Act. The Learned Counsel for the assessee submitted that said form 10CCB was filed on 05.06.2020 almost 9 days before the return was processed u/s 143(1) of the Act and hence, form No. 10CCB was available with the assessing officer as on the date of processing of return. The Id Counsel also submitted that the claim of deduction u/s 801A of the Act was allowed to the assessee in all the previous scrutiny assessments u/s 143(3) of the Act and hence, the assessee is eligible for deduction u/s 801A of the Act and the same cannot be disallowed merely because the form 10CCB was not filed alongwith die Return of Income. The Id Counsel placed reliance on the decision of the Hon`ble Jurisdictional High Court in the case of Gujarat Oil and Allied Industries reported in 201 ITR 325 (Guj), wherein it was held as follows:

*“Mr. Kaji, learned counsel for the assessee, on the other hand, took us to various decisions of the Supreme Court and other High Courts including this court in support of his contention that the charging provisions have to be strictly construed but not the machinery provisions or the procedural provisions. He submitted that the word "shall" is employed by the Legislature in the first part of section 80J, sub-section 6A), in connection with the admissibility of deductions to be considered by the Income-tax Officer when he frames the assessment. So far as the second part which is procedural in nature goes, the mentioning of the requirement of filing the audit report with the return does not mean that it is a mandatory provision and while construing that part of sub-section (6A) of section 80J(1) of the Act, the word "shall" can be interpreted as "may". We find considerable force in the submission of Mr. Kaji, learned counsel for the assessee. Once it is held, as we have done, that the second part which is procedural is directory in nature, its substantial compliance should be considered to be sufficient for the purpose of getting the benefit of deduction under section 80J(1) and to that extent, the word "shall" as employed by the Legislature in the second part of sub-section (6A) of section 80J(1) will have to be read as "may".*

*In the case of Director of Inspection of Income-tax (Investigation) v. Pooran Mall and Sons [1974] 96 ITR 390,' the Supreme Court, while considering the provisions of section 132, sub-section (5) of the Act, speaking through Alagiriswamy , laid down as under (headnote):*

*"It is not every provision of a taxing statute that will fall under the rule of strict interpretation. The question whether a certain provision of law is directory does*

*not fall to be decided on different standards because it is found in a taxing statute. There is no rule that every provision in a taxing statute is mandatory. The strict construction that a citizen does not become liable to tax unless he comes within the specific words of a statute is a different proposition. That a person cannot be taxed on the principle of estoppel does not admit of much argument."*

*Then he relied upon another decision of the Supreme Court in the case of CIT v. National Taj Traders [1980] 121 ITR 535, wherein the Supreme Court has observed as under (headnote):*

*"The principle that a fiscal statute should be construed strictly is applicable only to taxing provisions such as a charging provision or a provision imposing penalty and not to those parts of the statute which contain machinery provisions."*

*In the case of Goodyear India Ltd. v. State of Haryana and other group matters, reported in [1991] 188 ITR 402, the Supreme Court once again considered this question and, speaking through Sabyasachi Mukharji. (as he then was), made the following pertinent observations (headnote):*

*"It is well-settled that a reasonable construction of the taxing statute should be followed and literal construction may be avoided if that defeats the manifest purpose and object of the statute."*

*In the case of Motilal Ambaidas v. CIT [\[1977\] 108 ITR 136](#), this court was concerned with the interpretation of section 41(1) of the Act. It was held therein that this provision is not a charging section and hence, it has to be construed in such a manner as to make it effective and machinery workable.*

*Coming nearer to the point, our attention was drawn to certain decisions which had occasion to interpret the words "along with" as employed in the provisions construed by them. In the first place, Mr. Kaji took us to the decision of the Supreme Court in the case of Lakshmiratan Engineering Works Ltd. v. Assistant Commissioner (Judicial) 1, Sales Tax [1968] 21 STC 154. In that case, the Supreme Court had to consider as to whether rule 66 of the U.P. Sales Tax Rules, 1948, which requires that the memorandum of appeal should be accompanied by a challan showing deposit in the treasury of the tax admitted by the appellant to be due or of such instalments thereof as might have been payable was mandatory in character. It was observed that it lays down one uncontestable mode of proof which the court will always accept. The proviso to section 9 is, however, general and it provides that the court should accept satisfactory proof. Rule 66 does not, therefore, exclude the operation of the proviso to the section when equally satisfactory proof is made available to the Officer hearing the appeal and it is proved to his satisfaction that payment of the tax has been duly made in time. Rule 66 is only directory and provides only one of the modes of proving that the tax has been duly paid. If the challan was lost, the dealer should produce a copy of the challan from the treasury or obtain a certificate from the Treasury Officer or he could obtain from the bank the discharged cheque by which the amount of cheque was deposited by him and produce it. A certificate from the Sales Tax Officer is as good a proof as the challan from the treasury. All these means of proof will be equally irrefutable. Interpreting the word "entertain" in the proviso, it was observed that it meant the first occasion on which the court takes up the matter for consideration, it may be at the admission stage or if, by the rules of that Tribunal, the appeals are automatically admitted, it will be the time of hearing of the appeal. The words "no appeal ... shall be entertained" in the proviso to section 9 do not denote the filing of the memorandum of*

appeal but refers to the point of time when the appeal is being considered. Therefore, though the memorandum of appeal filed within time is not accompanied by the challan showing payment of tax, if before the appeal is being considered, satisfactory proof of the payment of tax is given, then the proviso to section 9 is satisfied. It was held that rule 66 thereof is directory and shows the modes of proving that the taxes have been paid. Placing reliance on this decision, Mr. Kaji, learned counsel for the assessee, submitted that in this case, sub-section (6A) of section 80J(1) of the Act also employs similar terminology, namely, furnishing of the report of the auditor along with the return. It is not mere physical accompaniment of the report to the return that would enable the assessee to claim permissible deduction and the proper stage for considering as to whether he is entitled to such deduction or not would be reached when the Income-tax Officer sits down to frame the assessment and not before that and if, before that, the assessee puts his house in order, he could not be denied this benefit, if his claim is otherwise just and proper for deduction and it could not be summarily rejected.

Then he invited our attention to the two decisions, one of the Allahabad High Court and the other of the Patna High Court which had occasion to interpret the word "along with" as employed in the Income-tax Act. The Allahabad High Court, in the case of *Addl. CIT v. Murlidhar Mathura Prasad* in [\[1979\] 118 ITR 392](#), had to interpret sub-section (7) of section 184 of the Income-tax Act. It provided that when the registration is granted or is deemed to have been granted to any firm for any assessment year, it shall have effect for every subsequent year and the proviso thereof stated that there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted; and proviso (ii) thereof stated that the firm furnishes, along with its return of income for the assessment year concerned, a declaration to that effect in the prescribed form and verified in the prescribed manner. The question before the Allahabad High Court was whether the renewal of registration to the assessee firm could be denied on the ground that a declaration in Form No. 12 was not filed along with the return. Answering this question in favour of the assessee, the Division Bench of the Allahabad High Court, speaking through Satish Chandra C.J., laid down as under (headnote):

"The essence of section 184(7) of the Income-tax Act, 1961, is that once registration has been granted to a firm, it is to have effect for every subsequent year in case there has been no change in the constitution of the firm or in the shares of its partners. The other requirements are merely to evidence this fact. The requirement that a firm shall furnish a declaration in Form No. 12 is merely to prove the facts in a particular way. The requirement that the declaration shall be filed along with the return of income is a procedural requirement. The legislative intent appears to be that while dealing with the assessment of a firm, the Income-tax Officer should have clear-cut evidence that the essential fact that there has been no change in the constitution of the firm or in the shares of the partners, has been proved satisfactorily in the required manner. Hence, the procedural requirements are to be treated as directory. If there is some defect in the declaration form, the assessee is to be given an opportunity for rectifying it under section 185(2). It cannot be ignored or rejected straightaway. Similarly, the requirement that the declaration should be filed along with the return is directory. A firm has four years to file a return under section 139(4) or a revised return under section 139(5) and it could validly file the declaration in Form No. 12 along with such return and it is entitled to continuation of registration. It does not then stand to reason that an assessee who is prompt and files a return before the time

*prescribed under sub-section (1) or sub-section (2) of section 139 should suffer merely because the declaration was not filed physically along with it. The Taxation Laws (Amendment) Act, 1970, which came into force on April 1, 1971, has repealed and re-enacted section 184(7) and now the requirement that the declaration should accompany the return has been given up. However, a definite time limit has been fixed for the filing of the declaration. This is another indication that prior to the amendment there was no specific time limit and the declaration could be filed up to the time of assessment."*

*We respectfully agree with the reasoning of the Allahabad High Court. The scheme with which we are concerned is almost parallel. Merely because the auditors' report has not physically accompanied the return, it cannot be said that it cannot be processed on merits for deciding the claim of deduction under section 80J(1) of the Act when the Income-tax Officer sits down for framing the assessment. It is the only stage at which all the requirements of section 80J(1) of the Act read with sub-section (6A) thereof are to be ascertained. We may now turn to the decision of the Patna High Court, taking a view similar to the one taken by the Allahabad High Court, in the case of CIT v . Sitaram Bhagwandas [\[1976\] 102 ITR 560](#). It has been observed that (headnote):*

*"Having regard to the spirit and substance of the provisions regarding registration of firms in section 184(7) of the Income-tax Act, 1961, it is clear that the term 'along with its return of income' (as it stood before April 1, 1971) is merely directory and not mandatory. The law must be so construed as to not make it in any way illogical or ridiculous. All that the Legislature intended was that the return should be duly filed and that the declaration should be duly made and both the documents should be before the assessing authority at the time when he is applying his mind to the assessment of any particular firm. If he is then satisfied that the return had been duly filed and that there has been no change in the constitution of the firm and no change in the shares of the partners and the firm was registered during the previous year, then the necessary advantage of renewal conferred by sub-section (7) of section 184 must undoubtedly follow to the assessee-firm. The declaration could not be held to be invalid for the reason that it was not filed along with the return."*

*In our view, the aforesaid reasoning of the Allahabad High Court and the Patna High Court would squarely apply to the facts of the present case. The provision about furnishing of the auditors' report along with the return has to be treated as a procedural provision, directory in nature, and its substantial compliance should suffice, meaning thereby that such report should be made available by the assessee to the Assessing Officer latest when the question of framing of assessment is taken up by the Income-tax Officer and when he applies his mind to the claim of the assessee and if by that time, the assessee has put his house in order and has furnished the report of the auditor for supporting the return, he can be said to have satisfied the requirement of section 80J(6A) of the Act.*

*As a result of the aforesaid discussion, the question referred for our opinion has to be answered in the affirmative, in favour of the assessee and against the Revenue. The question is, accordingly, answered. No order as to costs "*

8. We note that Hon'ble jurisdictional High Court in the case of Gujarat Oil and Allied Industries (supra) have held that the provision about furnishing of

auditor's report in form No. 10CCB alongwith the return is the procedural provision and directory in nature and it would suffice if such reports made available to the Assessing Officer before the framing of the assessment, and the same the Assessing Officer has to consider, apply his mind and decide on the issue. The said decision of the Hon'ble jurisdictional High Court is with reference to section 80J of the Act which is identical provision of Section 80IA and hence, the ratio of the said decision squarely applies to the facts of the assessee's case under consideration.

10. We note that a similar view was upheld by the Hon'ble Delhi High Court in the case of CIT vs Contimeters Electrics Pvt. Ltd., 317 ITR 249 (Delhi) and CIT v. Web Commerce India Pvt. Ltd., 318 ITR 135 (Delhi) and these decisions were upheld by Hon'ble Supreme Court. We note that all the grounds of appeals are inter-connected and are dealt with jointly. We note that Assessing Officer had disallowed the claim of deduction u/s 80IA of the Act merely because form 10CCB was not filed alongwith the return of income though the return of income was filed before the due date as per provisions of section 139 (1) of the Act and in the return of income, the deduction under section 80IA of the Act was claimed. We note that assessee-company is engaged in the same activities and deductions under section 80IA of the Act were allowed in the scrutiny assessments u/s 143 (3) of the Act in the earlier years. We note that Id Counsel also pleaded before us that in the case of deduction for allowing incentive, the revenue ought to have interpreted the provisions liberally more particularly the aspect of procedural matter and for that Id Counsel relied on the following decisions.

- a) CIT V/s. Kaira District Co-Operative Milk Producers Union Ltd (Guj. HC) (1979) 116 ITR 319.
- b) CIT V/s. National Taj Traders (SC) (1980) (121 ITR 535)
- c) Goodyear India Ltd V/s. State of Haryana & Others (SC) (1991) (188 ITR 403)

11. We note that Coordinate Bench of ITAT, Surat in assessee's own case in ITA No. 597/SRT/2018, order dated 23.08.2021 allowed the claim of deduction u/s 80IA of the Act, even though the return of income was filed beyond the due date as per section 139 (1) of the Act. The Coordinate Bench held that, when the substantial cause of justice is involved, technicality should be ignored. The findings of the Coordinate Bench are reproduced below:

*"8. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. We note that solitary grievance of the assessee is against the disallowance of claim of deduction under section 80IA of the Act for Rs. 13,09,512/- . The assessing officer noted that assessee has claimed deduction u/s 80IA of the Act but has filed the return of income on 29.03.2014 i.e. after the due date i.e. 31.10.2013 (extended date) of filing of audited return of income u/s 139(1), had lapsed. The Assessing Officer held that since the assessee had filed the return of income after the expiry of 5 months of the due date of filing of return of income u/s 139(1) of the Act, hence the deduction claimed u/s 80IA of the Act of Rs. 13,09,512/- is not allowed. Learned Counsel submitted before us that assessee had filed the audited accounts and also the tax audit report along with report in Form No. 3CCB for claim of deduction u/s 80IA of the Act before the due date i.e. 30.09.2013 and therefore, the substantive part of compliance was made. The ld Counsel pointed out that assessee was unable to make the payment of self- assessment tax of Rs.1,50,21,672/- on account of financial problems and therefore, the return of income would not be filed within the stipulated time period under section 139(1) of the Act.*

*We note that essential documents, such as, audited accounts, the tax audit report along with report in Form No. 3CCB for claiming of deduction under section 80IA of the Act were available before the assessing officer. Audited accounts contain the net profit earned by the assessee. Tax audit report contains the information relating to compliance of income tax and Form No. 3CCB contains the information for claiming of deduction under section 80IA of the Act. Therefore, to examine the genuineness of claim of deduction under section 80IA the relevant details and documents were available before the assessing officer. Hence, we note that assessee has made substantial compliance. We note that assessee company was facing genuine difficulty, as the assessee company was unable to make the payment of self- assessment tax of Rs.1,50,21,672/- on account of financial problems and therefore, the return of income would not be filed within the stipulated time period under section 139(1) of the Act. The ld Counsel further urges that, even in cases where form 10CCB was filed during the appellate proceedings, the same ought to be considered as fulfillment of the condition. The ld Counsel then buttress assessee's case with the aid of various judicial precedent as well, and submitted before the Bench that in the case of CIT V/s. Medicop Ltd (2010) 323 ITR 554 (MP), it was held that filing of audit report is procedural and directory in nature and the same can be filed at the appellate stage.*

*9. We note that Hon`ble Supreme Court while interpreting the deductions, in the case of Collector of Central Excise vs. Parle Exports (P)Ltd. (1989) 1 SCC 345, held as follows:*

*“Do not extend or/widen the ambit at the stage of applicability. But once that hurdle is crossed, construe it liberally”.*

*Since the assessee has made substantial compliance to claim the deduction under section 80IA of the Act. There are no findings of the assessing officer that assessee is not eligible to claim deduction under section 80IA of the Act. We noticed that there is sufficient compliance with the main requirements to claim the deduction under section 80IA of the Act. In view of the above discussion, the claim of the assessee cannot be denied on technicalities when the assessee is legally otherwise entitled for deduction.”*

12. We note that learned CIT (A) had rectified his order u/s 154 of the Act wherein the learned CIT (A) categorically held that Assessing Officer was simply required to verify the date of filing of form no. 10CCB on portal and not the correctness of the claim u/s 80IA of the Act, as before him the only issue was whether the assessee is liable to get deduction u/s 80IA of the Act when the prescribed form 10CCB was filed after a due date but before the date of assessment u/s 143 (1) of the Act. Therefore, considering the findings of the Coordinate Bench of ITAT Surat in assessee`s own case (supra), the assessee is entitled to claim deduction under section 80IA of the Act. As we have noted above that the claim of deduction u/s 801A of the Act was allowed to the assessee in all the previous scrutiny assessments u/s 143(3) of the Act and hence, the assessee is eligible for deduction u/s 801A of the Act and the same cannot be disallowed merely because the form 10CCB was not filed along with the Return of Income. That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and all the grounds of appeal of the Revenue are dismissed.

13. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 30/01/2023 by placing the result on the Notice Board.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 30/01/2023

SAMANTA / Dkp Out Sourcing Sr.P.S

Sd/-  
(Dr. A.L. SAINI)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**// True Copy //**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat